

**SEPARATE STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: Effects of Communication Towers on Migratory Birds; WT Docket No. 03-187; Notice of Proposed Rulemaking

I am pleased to support this Notice of Proposed Rulemaking because it provides a thorough and thoughtful review into the potential effects of communications towers on migratory birds. In addition, the Notice specifically responds to my request earlier this year, during our consideration of the “gulf coast” petition, to reengage the larger migratory bird proceeding. This important proceeding unfortunately had languished for some time, and I am pleased to be able to push that review forward now.

The item before us represents a balanced look on a challenging issue. Migratory birds are a prized natural resource. Conservation of the migratory bird population and their habitats for future generations is an important goal for our society. At the same time, communication towers represent a critical component in the continued deployment of basic and advanced telecommunications services throughout the country. Towers not only will form the backbone of the transition to digital television, they also are used everyday by our nation’s public safety community to effectively and timely respond to those who need our help the most. So I am pleased that our Notice asks tough questions and equally explores both sides of the issue so that we may best develop a strategic approach for dealing with the impact that communication towers have on migratory birds.

While I generally support the Notice, I did want to highlight one aspect of the item that gives me pause. The Notice suggests that there may be an open question about our legal authority under the National Environmental Policy Act (NEPA) and the Communications Act to make the requisite public interest determination to support rules specifically for the protection of migratory birds. I, for one, am confident in our legal authority under the NEPA and the Communications Act to take action, if appropriate, and do not think our conclusion on this issue should be a tentative one. I took a similarly firm position on the legal effect of the National Historic Preservation Act in our consideration of the Nationwide Programmatic Agreement – a determination that was recently upheld in the U.S. Court of Appeals for the D.C. Circuit.

Finally, I understand that there is a renewed effort by members of the communications industry along with leading environmental and conservation groups to discuss what can collectively be done to minimize the impact of communications towers on migratory birds. I am very encouraged by this news and want to extend my strong support for this cooperative effort. I hope that this group will function as an important incubator to develop and hatch consensus positions that will equally serve conservation and communications objectives going forward.